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No.

Supreme Court, U.S.
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In the

Supreme Court of the United States

JAMES A. LAW, individually and as Executor of the Estate of JANICE C. LAW and JAMES A. LAW,
Petitioner,

v.

WALTER A. CAMP, MD, BRUCE L. WARWICK, FRANK A. CORVINO, MITCHELL KLINE, WEI-NCHIH LEE, GREENWICH HOSPITAL, FRANCIS X. WALSH, MD, ARTHUR ROSENBERG, JAMES BRUNETTI and DICKERMAN HOLLISTER, JR., MD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITTIONER JAMES A. LAW

ROBERT H. LAW, III
Counsel of Record
80 Business Park Drive
Suite 304
Armonk, NY 10504
(914) 273-5125
Attorney for Petitioner

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ARGUMENT

I. The Respondents' Objections To The Petition For Writ Of Certiorari Provide No Reason Why The Petition Should Not Be Granted.

The respondents' briefs indicate that Janice C. Law's hastening of death by removal of life support was not the proximate cause of her death because respondents argue that in the case of *McConnell v. Beverly Enterprises-Connecticut, Inc., 209 Conn. 692, 553 A.2d 596 (1989)* the Connecticut Supreme Court had held that removal of life support systems could not be considered the proximate cause of death in a patient rendered in a terminal condition by some pre-existing medical condition or pathology. Respondents' erroneous conclusion and interpretation of the law of the State of Connecticut in *McConnell* was reached because respondents failed to recognize that in *McConnell* there was no violation of the Section 19a-571 requisites that required the expressed wishes of the patient concerning removal of life support. Therefore the physicians and hospital in *McConnell* did not breach their duty to Mrs. McConnell. Without a breech of duty a physician or hospital cannot be found negligent. Mrs. McConnell's removal from life support was done in accordance with the law of the State of Connecticut since "the trial court found clear and convincing evidence that Mrs. McConnell had expressed 'forcefully and without wavering' that artificial means should not be employed to prolong her life." *McConnell v. Beverly Enterprises-Connecticut, Inc. 209 Conn. 692, 553 A.2d 596 (1989).* Therefore Mrs. McConnell's death was in fact from her genuine expression of her right to refuse unwanted medical treatment/right to self-determination.

In the case at bar the District Court found that "Mrs. Law did not have a living will, health care proxy or other notation regarding her wishes as to life support, and she had never expressed her wishes on this issue to her family or her physicians" *Law v. Camp, 116 F.Supp.2d 295 (D.Conn. 2000)* (App. 14a). Therefore life support was not removed in

accordance with the law of the State of Connecticut. Section 19a-571 requires "the attending physician has considered the patient's wishes concerning the withholding or withdrawal of life support systems" *Connecticut General Statute Section 19a-571.* Therefore in the case of Janice C. Law, the case at bar, the removal of life support became the instrument of homicide and the proximate cause of her death. The removal of life support to hasten death is an inescapable conclusion that there is a causal connection between the removal of life support and the death of Janice C. Law. When the physicians and hospital hastened the death of Janice C. Law by the removal of life support the causal connection between the illegal removal of life support and the death of Janice C. Law is established.

The intentional hastening of Janice C. Law's death without her consent fulfills the narrow exception to the general rule requiring expert opinion to establish proximate cause in a medical malpractice case where the plaintiff's evidence creates a probability so strong that a lay jury can form a reasonable belief without it, see *Esposito v. Schiff, 38 Conn.App. 726, 662 A.2d 1337* or where the physician's negligence is so gross as to afford an almost conclusive inference of causation, see *Puro v. Henry, 188 Conn. 301, 449 A.2d 176 (1982).*

As stated by Justice Learned Hand in *The T.J. Hooper (1932, CA2 NY) 60 F2d 737, 740, cert den 287 US 662, 77Led 571, 53 S Ct 220:*

> "In most cases reasonable prudence is in fact common prudence: but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices. It never may set its own tests, however persuasive be its usages. Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission."

II. Consent Of Family Not Required

The respondents' argument that the family consented to the removal of life support is incorrect and inapplicable. The District Court's opinion indicated that there was a question of fact concerning what the family was told as to Mrs. Law's condition and its relation to removal of life support. But the consent of the family was not what made the removal of life support in *McConnell* legal. In 1989 at the time of *McConnell* the consent of the family in addition to the clear and convincing evidence of the express wishes of the patient as to life support removal was required. When Section 19a-571 was amended in 1991 the family consent requirement was removed from the statute. Therefore, as was always the case, the clear and convincing evidence of the expressed wishes of the patient as to the removal of life support were required to make the removal of life support under this statute legal.

III. Requirement Of More Than Accepted Care

A right to self-determination would never justify, and is in fact antithetical to, involuntary euthanasia. It would be a profound sacrilege to this right for a person's life ever to be taken involuntarily by another. Indeed, it was precisely the importance of ensuring that such a decision be the individual's own that led this Court in *Cruzan*, addressing the case of a women in a vegetative state who was no longer competent, to permit the State "to safeguard the personal element of this choice through the imposition of heightened evidentiary requirements." *Cruzan v. Director, Missouri Dept. of Public Health, 497 U.S. 261(1990)*

The courts, as neutral arbiters of disputes between physician and patient, reserve the right to hold as a matter of law that the physician did not act as a reasonably prudent physician should have under the circumstances presented. This is so, regardless of how other members of the profession would have acted. Such cases are rare, but the option to reach such a result where necessary to avoid injustice seems both wise and necessary.

Setting the physician's duty of care to his patient in reference to accepted or ordinary medical practice standards may not be sufficient safeguard to the patient. Such a standard allows physicians to set the standards by which their conduct will be judged. What a good, prudent physician would do in the circumstances may strongly suggest what should be done in treating a patient. However, it should not be conclusive. It may not be synonymous with legal medical care.

For whatever reason, prevailing standards of accepted medical care may be inadequate. As a result, the fact that the doctor acted in accordance with ordinary, accepted, prevailing or average medical practice may not be enough. Liability may still be imposed if the court determines reasonable prudence required more.

Standards of the medical profession, as those of any other profession, are in the last analysis to be measured by the courts. It may be that the prevailing standards of practice are negligent.

IV. A Society Is Ultimately Judged By The Way It Treats Its Most Vulnerable Citizens.

Janice C. Law was incapacitated and unable to speak or act for herself. The respondents have asked this Court to believe that the State of Connecticut through Section 19a-571 has given to those with the power to heal a license to kill by claiming that Section 19a-571 is only an immunity statute.

The respondents in the case at bar exploited Janice C Law's right to refuse unwanted medical treatment, commonly referred to as the right to die. The respondents hastened her death by removal of life support under a statute which would provide immunity if its requisites were followed. The respondents did not follow these requisites. Many states, as did Connecticut, by their statutes grant to physicians the power to remove life support to exercise a patient's right to self-determination/refusal of unwanted medical treatment.

The District Court and the Second Circuit have allowed this power to be exploited and by so doing are granting permission for involuntary euthanasia or physician-committed homicide. If the decision in *Law v. Camp, 116 F. Supp.2d 295 (D.Conn. 2000)* is allowed to stand the most vulnerable citizens of this nation will be subjected to this unjustified deprivation of life. The final authoritative voice of this Court is necessary.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Robert H. Law, III
Counsel of Record
80 Business Park Drive
Suite 304
Armonk, NY 10504
914-273-5125